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DISTRICT OF WYOMING
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U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

QUINQUE OPERATING CO., et al.,)

Plaintiffs,)

v.)

PACIFIC GAS & ELECTRIC CO., et al.,)

Defendant.)

Civil No. 00-MD-1674-D
MDL Docket No. 1293

ORDER ON PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND EXPENSES

This matter comes before the Court on Plaintiffs' Motion for Attorneys Fees and Expenses Pursuant to 28 U.S.C. § 1447(c). The Court, having reviewed the material submitted in support of and in opposition to Plaintiffs' Motion and being otherwise fully informed in the premises, FINDS and ORDERS as follows:

The tortured procedural history of this case is worth briefly outlining. In September of 1999, Defendants removed this case from the state court in Stevens County, Kansas, where it was filed, to a federal court in the District of Kansas. Defendants then successfully moved the Judicial Panel on Multi-District Litigation to have the case transferred to this Court. On January 19, 2001, this Court granted Plaintiffs' Motion to Remand, remanding the case back to state court in Kansas, where it rightfully belongs. Thereafter, Defendants filed a Motion to Reconsider, asking this Court to reconsider its Remand Order. This Court denied Defendants'

Motion to Reconsider on March 2, 2001.

Plaintiffs now petition this Court, pursuant to 28 U.S.C. § 1447(c), for the substantial attorneys fees and expenses they incurred fighting the removal and resulting proceedings. Specifically, Ronald C. Minkoff (of Beldock Levine & Hoffman LLP), Robert Silver (of Boies Schiller & Flexner LLP), Clinton Krislov (of Krislov & Associates), and Patrick Pendley (of the Law Offices of Patrick Pendley) collectively request fees and expenses in the total amount of \$183,824.90. Rex A. Sharp, another attorney representing Plaintiffs, has filed a separate submission individually seeking fees and expenses for himself and various firms he has been associated with totaling an amount of \$100,137.40.

28 U.S.C. § 1447(c) states that “[a]n award remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” The Tenth Circuit has held that the fee award is discretionary with the court, and that no showing of bad faith need be made to justify such an award. *Suder v. Blue Circle, Inc.*, 116 F.3d 1351, 1352 (citing *Daleske v. Fairfield Communities, Inc.*, 17 F.3d 321, 324-25 (10th Cir. 1994)). “What is required to award fees, however, is a showing that the removal was improper *ab initio*.” *Id.* (quoting *Daleske*, 17 F.3d at 324).

The Court is well aware of both the quantity and quality of the legal arguments advanced by Defendants in its attempt to support its assertion of federal subject matter jurisdiction in this action. The Court has conducted a thorough review of the record, and based on the propriety, or impropriety, of Defendants’ removal of this action, finds that Plaintiffs’ counsel should be

awarded fees and costs. The Court also finds, however, that the total amount of fees and expenses requested is somewhat excessive, given the general complexity and occasionally duplicative nature of counsels' work. As such, the Court concludes that Plaintiffs' counsel should be awarded fees and expenses in the amount of sixty percent (60%) of that requested.

THEREFORE, it is hereby

ORDERED that Ronald C. Minkoff (of Beldock Levine & Hoffman LLP), Robert Silver (of Boies Schiller & Flexner LLP), Clinton Krislov (of Krislov & Associates), and Patrick Pendley (of the Law Offices of Patrick Pendley) shall be awarded fees and expenses in the total amount of \$110,305.00. It is further

ORDERED that Rex A. Sharp shall be awarded fees and expenses in the total amount of \$60,082.00.

Dated this 28th day of August, 2002.


United States District Judge